

2016

**Carole Marziale and James Marziale, Appellees/Respondents, v.
Spanish Fork City, Appellant/Petitioner.**

Utah Supreme Court

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Recommended Citation

Reply Brief, *Marziale and Marz v. Spanish Fork City*, No. 20160696 (Utah Supreme Court, 2016).
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IN THE UTAH SUPREME COURT

CAROLE MARZIALE and JAMES
MARZIALE,

Appellees/Respondents,

v.

SPANISH FORK CITY,

Appellant/Petitioner.

REPLY BRIEF OF APPELLANT

Supreme Court No. 20160696-SC

Court of Appeals No. 20140982-CA

On Certiorari to the Utah Court of Appeals

Fourth District, Provo Department
The Honorable Darold J. McDade
Case No. 130401364

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ARGUMENT

The Marziales advance three main arguments that their complaint in the Fourth District Court located in Provo (the “Provo district court”) should be deemed timely filed: 1) that the existence of the word “approved” on a screenshot of the Utah Bar’s website confirms that their Complaint submitted for filing with the Provo district court was accepted and deemed filed; 2) that the Court of Appeals properly held that the electronic receipt of the Marziales’ complaint was the meaningful equivalent of its acceptance by relying on the Utah Trial Court System Electronic Filing Guide and the Merriam-Webster online dictionary; and 3) that complaints must be accepted even when a filing fee has not been paid. With regard to their complaint sought to be filed with the Fourth District Court located in Spanish Fork City (the “Spanish Fork district court”), the Marziales assert that the jurisdictional issues related to whether the required undertaking was filed as required by the Governmental Immunity Act (the “GIA”) should not be considered because this issue was not preserved, and that even if it was preserved, the undertaking sought to be filed with the Provo district court adequately satisfied the requirements of the GIA for their complaint sought to be filed with the Spanish Fork district court. The Marziales also argue that there is no authority for district courts to control the location where a complaint is to be filed through the Electronic Filing System (“EFS”). Last, the Marziales assert that they have been denied due process of law because they did not receive actual notice that their complaints sought to be filed on August 2, 2013 were not accepted. As explained below, each of these arguments fail and this Court should reverse the decision of the court of appeals and affirm the ruling of the district court.

I. THE ELECTRONIC FILING SYSTEM DOES NOT CONFIRM THAT THE COMPLAINT SOUGHT TO BE FILED WITH THE PROVO DISTRICT COURT WAS ACCEPTED AND THEREFORE FILED UNDER RULE 5 OF THE UTAH RULES OF CIVIL PROCEDURE.

There is no evidence that the Marziales' complaint was accepted by the Provo district court on August 2, 2013. There is no complaint with a filing date of August 2, 2013 noted on it, and there was never a case number assigned to the Marziales' complaint on August 2, 2013. Nonetheless, the Marziales assert that their complaint sought to be filed with the Provo district court was "approved" on August 2, 2013 at 4:41:56 based exclusively on a screenshot from the Utah Bar's website. *See* Aplee. Br., pp. 11, 18. The Marziales also assert that their complaint sought to be filed with the Provo district court was accepted by the EFS and then manually rejected by the Administrator of the EFS. *Id.* at pp. 19-20.

A. The Screenshot Cited by the Marziales does not Confirm that the Complaint Submitted for Filing with the Provo District Court on August 2, 2013 was Accepted; To the Contrary, the Complaint was Unequivocally Rejected.

The screenshot cited by the Marziales (Addendum C to their Brief) clearly and facially provides that it relates to the "Rejection Notification" of the documents submitted for filing. The "status" of the rejection is noted as being "Receipt Issued," and under "Status History," the word "Approved" appears directly above a notation of "Receipt Issued" and directly next to the date and time being "08-02-2013 04:41:56 PM." This is the precise date and time that Tracy Walker, the Administrator of the EFS, confirms to be when the rejection notification for the Marziales' complaint sought to be filed with the Provo district court was sent. (R. 167-166). Further, the screenshot attached as

Addendum D to the Appellee's Brief also shows the "filing status" of the complaint sought to be filed with the Provo district court. This second screenshot states: "Status: Rejected 08-02-2013:04:41:56 PM." Even more fundamental is the fact that there is no complaint with the date noted on it. Rule 5(e) of the Utah Rules of Civil Procedure applicable to this case provides:

Filing with the court defined. A party may file with the clerk of court using any means of delivery permitted by the court. The court may require parties to file electronically with an electronic filing account. Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge. The filing date shall be noted on the paper.

(emphasis added). There is no complaint that contains any notation in any form showing that the Marziales complaint was filed on August 2, 2013. The Marziales acknowledge this through the sworn testimony of an employee of their counsel who declared that "the internal court record did not log the filing due to the alleged problems." (R. 107.) Finally, if the Marziales' complaint had been filed, there would have been no need to submit a third complaint for filing 39 days later, on September 10, 2013. The Marziales ignore the clear content of the screenshots, the declaration of the Administrator of the EFS, and the fact that no complaint became a matter of record with any court on August 2, 2013. The fact that the word "approved" appears on the screenshot provided by the Marziales in no way shows that their complaint was accepted, i.e., filed, on August 2, 2013.

B. The Complaint Sought to be Filed with the Provo District Court on August 2, 2013 was not Accepted by the EFS and the Clerk of Court did not Subsequently Reject a Complaint previously accepted by the EFS.

As shown above, there is no basis to conclude that the August 2, 2013 complaint submitted for filing with the Provo district court was ever accepted by the EFS. Because of this lack of evidence, the Marziales argue that it was improper for the clerk to manually reject the submission after it was received by the EFS. According to the Marziales, Rule 5(e) requires the clerk of court and the EFS to be completely distinct from one another so that the clerk of court cannot have any control over what is accepted by the EFS. Aplee. Br., p. 19. The Marziales, therefore, conclude that their complaint was accepted by the EFS, but then subsequently rejected by a clerk.

As a preliminary point, this argument undercuts the Marziales' assertion that the Complaint was approved on August 2, 2013 at 4:41:56 PM. The complaint that the Marziales sought to file with the Provo district court was received by the EFS on August 2, 2013 at 4:20:08 PM (R. 167-166.) If the complaint sought to be filed with the Provo district court was deemed accepted upon receipt by the EFS, then it would have been indicated to have been approved at that time, not 21 minutes later at 4:41:56 PM. Again, it is clear that the complaint sought to be filed with the Provo district court was rejected at 4:41:56 PM on August 2, 2013.

The Marziales also incorrectly assume that the complaint submitted for filing with the Provo district court on August 2, 2013 was accepted by the EFS prior to the administrative review of the complaint by the clerk. The assertion that a clerk cannot

have any control over what is accepted through the EFS fundamentally miscomprehends how the EFS functions. As established by Tracy Walker, “[a] clerk of court or other court personnel may access and review any document that is submitted to the Electronic Filing Manager through a computer application called the ‘Clerk Review Interface.’ If a document is not automatically approved for docketing, a Technical Support Specialist or other authorized court person may manually reject or accept [the] electronically submitted document[] through Clerk Review Interface.” (R. 168.) A clerk, therefore, may access and review a document only in those circumstances when the document is not automatically approved by the EFS. In other words, when a complaint is accepted by the EFS, there is no need for subsequent review by a clerk.

In this case, the EFS did not automatically accept the complaint submitted for filing with the Provo district court on August 2, 2013. The failure of automatic acceptance triggered a review by the clerk, who then determined that the complaint failed to meet filing requirements, and manually rejected the complaint through the Clerk Review Interface. Contrary to the Marziales’ suggestion, the clerk of court simply did not reject the complaint after it had already been accepted by the EFS. The complaint was never accepted by either the EFS or a clerk.

II. RULE 5 REQUIRES MORE THAN RECEIPT OF DOCUMENT FOR IT TO BE FILED.

In its decision, the court of appeals included a footnote that provided:

We note that the Utah Trial Court System Electronic Filing Guide...explains that “[a]ll documents are accepted and filed by the court when they are received.” Utah State Courts, *Utah Trial Court System*

Electronic Filing Guide, 2 (Dec. 2013)¹,
http://www.utcourts.gov/efiling/docs/electronic_filing_guide.pdf
[<http://perma.cc/N2ED-H48X>]. It acknowledges that “[e]lectronic filing is subject to the rules of the Utah Judicial Council and the Utah Supreme Court,” and “[i]n the event of a conflict between the electronic filing system requirements and the rules of the Judicial Council or the Utah Supreme Court, the rules of the council or court will prevail.” *Id.*

2016 UT App 166, ¶ 17, fn. 8. The Marziales assert that this language from the Guide and the plain meaning definition of “accept,” which the Marziales state is set forth in the Merriam-Webster online dictionary, means that Rule 5 only requires that a document be received for it to be considered filed with a district court. *Aplee. Br.*, pp. 21-22. As next explained, these arguments fail.

A. THE RULES OF CIVIL PROCEDURE PREVAIL OVER ANY CONFLICT WITH PROVISIONS OF THE GUIDE.

The Electronic Filing Guide (the “Guide”), in addition to having the language quoted by the court of appeals, also provides under the heading “Filing Date” that “[t]he filing date and time is not when the filer submits the document to their Service provider. For purposes of electronic filing, the file date will be the date and time recorded when the filing was received and was posted by the court’s electronic filing manager.” R. 157. Thus, the Guide also provides that something more than receipt of a document is required for filing – any document must actually be posted by the court’s electronic filing

¹ The City notes that this version of the manual cited by the Court of Appeals is dated December, 2013, more than three months after the Marziales’ sought to file their complaint. A version of the Utah Trial Court System Electronic Filing Guide in place at the time the Marziales’ sought to file their complaint is included in the Record at R. 164 – 147. Those portions of the Guide relevant to this appeal, however, did not change between the April 2013 and December 2013 versions.

manager, and there is no evidence that the Marziales' complaint was posted by the electronic filing manager on August 2, 2013. More important, there is no dispute that in the event that there is a conflict between the terms of the Guide and the Rules of Civil Procedure, it is the Rules that prevail. As shown in the City's opening brief and below, the text and structure of the Rules clearly show that more than receipt of a paper is required for filing to have been perfected.

B. THE TEXT AND STRUCTURE OF THE RULES OF CIVIL PROCEDURE MAKE CLEAR THAT THE TERM "ACCEPT" DOES NOT MEAN "RECEIPT".

With regard to the text and structure of the Rules of Civil Procedure, the Marziales essentially argue that there is no meaningful difference between the terms "receive" and "accept," and that the Merriam-Webster definition of "accept" utilized by the court of appeals should be adopted by this Court. The City cites the definition of "accept" set forth in the Black's Law Dictionary not necessarily because that particular definition should be adopted by this Court,² but to show exactly how dictionaries in this case may be used to offer definitions encompassing both parties' positions. *See Craig v. Provo City*, 2016 UT 40, ¶ 26, fn. 3.

Review of various Rules of Civil Procedure shows that the terms "receive" and "accept" have different meanings within the Rules and that, particularly in the context of filings, this Court has made clear when papers must be accepted regardless of circumstances. *See*, Applt. Br., pp. 19-21. Notably, Rule 10(f) makes clear that clerks

² If a dictionary were to be used to define a legal term, it does make more sense to use the Black's Law Dictionary than a non-legal dictionary.

have no discretion other than to accept papers that do not conform with formatting rules. (“If they are not prepared in conformity with paragraphs (a) – (e), the clerk must accept the filing but may require counsel to substitute properly prepared papers for nonconforming papers...” (emphasis added); *See also*, Utah R. App. P. 3(f) (“The clerk of the trial court shall accept a notice of appeal regardless of whether the filing fee has been paid”) (emphasis added). There is no similar language in Rule 5 that requires clerks to accept all papers that are received. It is actually the Marziales, not the City,³ who impermissibly read additional language into Rule 5 – the Marziales’ position is that all papers must be accepted for filing despite there being no clear language requiring such.

III. WHETHER CLERKS MUST ACCEPT A COMPLAINT WHEN A FILING FEE HAS NOT BEEN PAID WAS NOT DECIDED BY *DIPOMA*.

The Marziales assert that this Court’s decision in *Dipoma* is “indistinguishable” from this case because in *Dipoma*, “the plaintiff filed a complaint but Plaintiff’s check for the filing fee was returned for insufficient funds” and “[t]he defendant subsequently argued filing did not occur, alleging the filing fee was jurisdictional.”⁴ Specifically, the defendant in *Dipoma* “argue[d] that filing requires not only depositing papers with the court, but also payment of the required filing fee.” *Dipoma v. McPhie*, 2001 UT 61, ¶ 10. In this case, the basis of the City’s motion for summary judgment was that the district court did not have jurisdiction over the Marziales’ claims until a complaint was filed and

³ The Marziales assert that the “[t]he City nevertheless argues since Rule 5(e) does not explicitly state clerks “must” accept any pleading, the authority to do so is implied... This argument, however, impermissibly reads additional language into the rule.” Appellee’s Brief, p. 24.

⁴ Aplee. Br., p. 29.

that Rule 5, which was amended after the *Dipoma* decision, required the complaint to be accepted by the EFS, clerk, or judge. *See also*, Utah R. Civ. P. 3(b) (“The court shall have jurisdiction from the time of filing of the complaint...”). The City is not arguing that the failure to pay a filing fee deprives a district court of jurisdiction after the complaint has been accepted. Rather, the point is that a district court only has jurisdiction upon a complaint being accepted, which in this case did not happen until after the statute of limitations had run.

The Marziales also assert that the legal issues presented in this case were addressed in *Dipoma*. Again, *Dipoma* was not reviewing the 2008 amendment to Rule 5 requiring that papers be “accepted,” the precise word utilized by Utah Code § 78A-2-301(1)(dd), to be considered filed. Moreover, the *Dipoma* decision did not consider the provisions of Utah Code § 78A-2-302(2) specifying the manner in which litigants may institute any cause without the prepayment of fees. Reading these filing statutes together, it is clear that the legislature has mandated the prepayment of filing fees for cases to be instituted. And, as shown in the City’s opening brief, “[t]he legislature may generally prescribe the methods or means by which the jurisdiction of the courts may be invoked in the absence of constitutional inhibition.” *See State v. Johnson*, 114 P.2d 1034, 1040 (Utah 1941); *See also*, Utah R. Civ. P. 1(a) (“These rules govern the procedure in the courts of the state of Utah in all action of a civil matter...except as governed by other rules promulgated by the court or *statutes enacted by the Legislature...*”) (Emphasis added); *See also*, *Pratt v. Hercules, Inc.*, 570 F. Supp. 773, 786 (D. Utah 1982) (citing *Johnson* and holding that “it seems clear that under the Utah Constitution, the Utah

Legislature may define the jurisdiction of the lower courts as it sees fit. The court's role is only to interpret that intent...). The *Dipoma* decision did not address subsequent changes to the applicable Rules of Civil Procedure. Nor did *Dipoma* consider the filing fee provisions discussed above considered in light of one another and this Court's interpretation of Article VIII, Section of 5 of the Utah Constitution in *State v. Johnson*.

The Marziales also do not address any of these legal points made by the City in its opening brief. Instead, they rely on language from *Dipoma* that "if it had been intended that payment of filing fees be a jurisdictional requirement for commencing an action, a provision expressly requiring that fees be paid in advance would have been included." 2001 UT 61, ¶ 13. However, as explained above, the legislature has expressly provided that "all filings fees shall be paid at the time the clerk accepts the pleading for filing" and that a cause of action may be instituted without "prepayment" of fees only upon the submission of an affidavit of impecuniosity. See Utah Code §§ 78A-2-301(1)(dd) & 302(2). These provisions are clear: absent the submission of an affidavit of impecuniosity, a filing fee must be paid for a complaint to be accepted by a clerk of court or the EFS managed by the clerk of court. In this case, the EFS and clerk were simply complying with state law by not accepting the Marziales' complaint when a filing fee had not been paid.

IV. THE DEFINITION OF "FILING" SET FORTH IN RULE 5 SHOULD BE CONSISTENTLY APPLIED AND DOING SO DOES NOT NULLIFY THE PROVISIONS OF RULE 3(a).

The requirement that filing fees be paid at the time a complaint is accepted does not conflict with the provisions of Rule 3(a) concerning payments that are subsequently

dishonored. Rule 3(a) provides, in relevant part, that “[d]ishonor of a check or other form of payment does not affect the validity of the filing, but may be grounds for such sanction as the court deems appropriate, which may include dismissal of the action...” This provision, by its own clear terms, only applies to a “filing,” which has no other definition other than a paper that has been “accepted” by a court. The provision of Rule 3(a) dealing with the dishonor of checks or other forms of payments does not apply until after a complaint is filed under Rule 5(e).

The Marziales’ concern that the safe harbor provision of Rule 3(a) will be nullified by consistently applying the definition of filing to the rules is unavailing. The provision of Rule 3(a) related to dishonor of checks or other payment forms applies to circumstances where a complaint is submitted for filing, a filing fee is tendered, the complaint is accepted, and it is only subsequently learned that the filing fee payment was dishonored. These circumstances, while rare, would likely occur in cases where payment is not made by credit card, such as cases filed by *pro se* litigants (as in *Dipoma*), or in cases where a filing fee is not required due to the submission of an affidavit of impecuniosity. The Marziales seek to read the definition of “filing” out of Rule 3(a), and doing so would require the clerk of court and the EFS managed by the clerk of court to ignore statutes requiring the prepayment of filing fees. At the same time, as shown above, consistently applying the definition of “filing” set forth in Rule 5 does not nullify the safe harbor provisions of Rule 3(a) as the Marziales suggest. It just means that the “safe harbor” provision of Rule 3(a) does not apply to the circumstances of this case.

V. SUBJECT MATTER JURISDICTION CANNOT EXIST OVER THE COMPLAINT SOUGHT TO BE FILED WITH THE SPANISH FORK DISTRICT COURT.

Subject matter jurisdiction cannot exist over the Marziales' complaint sought to be filed with the Spanish Fork district court because no undertaking was filed and the Savings Statute does not allow for the refile of the complaint within the applicable statute of limitations. The Marziales assert that this Court should not review this issue because this argument was not preserved. However, as explained in the City's opening brief, challenges to subject matter jurisdiction may be raised at any time, even for the first time on appeal. *See, e.g., Brown v. Div. of Water Rights*, 2010 UT 14, ¶ 13, 228 P.3d 747. Further, this argument is based on this Court's decision in *Craig v. Provo City*, 2016 UT 40, ¶¶ 17-18, which was published on August 26, 2016, well after the City could have made this argument to the district court or the court of appeals. Therefore, as an obvious matter, the City could not have made this argument prior to briefing in this case. *See also, Patterson v. Patterson*, 2011 UT 68, ¶ 13, 266 P.3d 828 ("Our preservation requirement is self-imposed and is therefore one of prudence rather than jurisdiction").

The Marziales also assert that they did file an undertaking after submitting their complaint for filing with the Spanish Fork district court.⁵ This assertion, however, is in direct contradiction to what the Marziales represented to the court of appeals, which specifically noted that the Marziales submitted their complaint to the Spanish Fork

⁵ Aplee. Br., p. 41.

district court without the “required undertaking.” 2016 UT App 166, ¶ 3. Further, the Marziales argue to this Court that they “twice submitted a timely Complaint for filing on August 2, 2013: one Complaint but no undertaking, to the Spanish Fork Fourth District Court; and approximately 10 minutes later the same Complaint was resubmitted with an undertaking in the Provo Fourth District Court.”⁶ The record is clear. The required undertaking was not made with the complaint sought to be filed with the Spanish Fork district court.

VI. THE DISTRICT COURT CORRECTLY RULED THAT A COMPLAINT WAS NOT FILED WITH THE SPANISH FORK DISTRICT COURT.

Assuming that the jurisdiction exists over the Marziales’ complaint sought to be filed with the Spanish Fork district court, Utah law is clear that district courts are to implement case management systems to “ensure judicial accountability for the just and timely disposition of cases” and to “provide for each judge a full judicial work load that accommodates differences in the subject matter or complexity of cases assigned to different judges.” Utah Code Ann. § 78A-5-103(2). In this case, the reason the complaint sought to be filed in the Spanish Fork district court was rejected was “The CMS returned a ‘failure’ status during the validation step. The message from the CMS is: this court accepts only claims 20000 or less; you submitted ‘unspecified.’” (R. 90.) According to Tracy Walker, the case management system (denoted as “CMS”), records and manages information electronically submitted to the electronic filing system. (R. 168.)

⁶ Aplee. Br., pp. 17-18.

In their brief, the Marziales partially quote the stated reason for their complaint being rejected by the Spanish Fork district court, excluding the explicit references to the CMS in the rejection notification.⁷ The Marziales then assert that they “can find no basis in law for rejecting their August 2, 2013 complaint.”⁸ However, consistent with the inherent powers of the district court, the Utah Code and Utah R. Civ. P. 5 provide a clear basis for the rejection of the complaint submitted for filing with the Spanish Fork district court.

The Utah Supreme Court, in *Western Water, LLC v. Olds*, 2008 UT 18, ¶ 42, 184 P.3d 578, confirmed:

District courts are courts of general jurisdiction. As such they maintain jurisdiction to consider “all matters except as limited by” statute or constitution according to article VIII, section 5 of the Utah Constitution. Under this broad jurisdictional grant, district courts maintain a certain degree of inherent power to properly discharge their duties. The inherent power of the district courts allows them to consider and make rulings on matters respecting their own jurisdiction, such as whether the substance of a claim may be reached, whether an issue is ripe for adjudication, or whether a party has standing. Furthermore, a district court has inherent power to make, modify, and enforce rules for the regulation of the business before [it], ... to recall and control its process, [and] to direct and control its officers, including attorneys and such...

(internal quotation marks and citations omitted). In addition to these inherent powers, Utah Code Ann. § 78A-5-103(2), as set forth above, specifically requires that all district courts implement case management systems. Thus, it is well within the inherent and

⁷ Aplee. Br., 38.

⁸ Aplee. Br., 39.

statutorily provided powers of a district court to control the location of where complaints may be filed and processed, particularly when a court may lack required resources.⁹ The fact that a court at a particular location cannot accept¹⁰ complaints for large claims does not affect the jurisdiction of that court or otherwise restrict that court from being assigned large claims.¹¹ Further, controlling where large claims are filed does not impede public access to the courts – it merely requires that particular cases be filed where they may be appropriately processed. It does not preclude or otherwise impede the filing of large claims with the district court and there is no basis for claimants to have a case heard before a particular judge or at a specific location within a district court.

VII. THE REJECTIONS OF THE MARZIALES' COMPLAINTS SUBMITTED FOR FILING ON AUGUST 2, 2013 DO NOT RAISE ISSUES OF DUE PROCESS AND OPEN COURTS ACCESS.

The failure of a lawyer or party to properly and timely file a legal action does not implicate “due process” or “open access” to the judicial system. The Marziales argue that the rejections of their complaints by the courts on August 2, 2013 were arbitrary and “raise constitutional issues of due process and open court access to the court.”¹² The Marziales further state that they “can in fact find no circumstances proscribed [sic] under

⁹ It should be noted that the Spanish Fork district court was assigned a single judge at the time the Marziales sought to file their complaint.

¹⁰ Contrary to the suggestion of the Marziales, controlling which courts may accept particular complaints does not create a “division,” such as a criminal or civil division within the court.

¹¹ In fact, a claim for over \$29 million is before the Spanish Fork district court. *See* Fourth District Court Civil No. 150400474.

¹² Aplee. Br., p. 25.

statue [sic] or Court Rules whereby court personnel may refuse a complaint.”¹³ (emphasis in original). In this case, the Marziales assert that the rejection of their complaints “amount to a transfer of judicial power to non-judicial personnel by inviting non-judicial personnel to do what is a judge’s core task: rendering judgment on a litigant’s claim.”¹⁴

In support of their assertion that the rejections of their complaint raise issues of due process and access to open courts, the Marziales primarily cite to *Miller v. USAA Cas. Ins. Co.*, 2002 UT 6, 44 P.3d 663. The Marziales do not explain how the *Miller* holding is applicable to the facts of this case. In *Miller*, this Court held that a district court’s dismissal of extra-contractual claims violated the open courts provision and related due process protections. *Id.* at ¶ 65. *Miller* involved a contractual dispute in which a trial court dismissed a first cause of action and subsequently incorrectly applied the doctrine of *res judicata* to deny parties the opportunity to have extra-contractual claims presented in a second action. *Id.* at ¶¶ 43, 63-69. *Miller* held that the parties were entitled to have their extra-contractual claims heard in the first cause of action and that dismissal was inappropriate. *Id.* at ¶ 24. *See also, Powell v. Cannon*, 2008 UT 19, ¶ 17, 179 P.3d 799 (“*Miller*’s holding ... explains that after the order compelling the parties to obtain an appraisal, ‘all of the Millers’ claims were still pending, viable, and cognizable pursuant to that order, albeit in front of an appraisal panel. Thus, [the order] failed to dispose of the Millers’ claims on their merits and did not end the controversy between the litigants’). Hence, the parties in *Miller* were denied their constitutional right to their “day

¹³ *Id.* at p. 27.

¹⁴ *Id.*

in court.” A “day in court” was defined to mean “that each party shall be afforded the opportunity to present claims and defenses, and have them properly adjudicated on the merits according to the facts and the law.”¹⁵

As a general matter, “[t]he due process clause does not guarantee to the citizen of a state any particular form or method of state procedure. Under it he may neither claim a right to trial by jury nor or a right of appeal. Its requirements are satisfied if he has reasonable opportunity to be heard and to present his claim or defense, due regard being had to the nature of the proceeding and the character of the rights which may be affected by it.” *Dohany v. Rogers*, 281 U.S. 362, 369, 50 S. Ct. 299, 74 L. Ed. 904 (1930). *See also, Christiansen v. Harris*, 163 P.2d 314, 316 (Utah 1945) (“Many attempts have been made to further define ‘due process’ but they all resolve into the thought that a party shall have his day in court – that is each party shall have the right to a hearing before a competent court, with the privilege of being heard and introducing evidence to establish his cause or his defense, after which come judgment upon the record thus made”).

¹ *Puttuck v. Gendron*, 2008 UT App 362, ¶ 19, 199 P.3d 971 (quoting *Brown v. Wightman*, 151 P. 366, 366-67 (Utah 1915)).

Further, the open courts provision “is intended to place ‘a limitation upon the [l]egislature to prevent that branch of the state government from closing the doors of the courts against any person who has a legal right which is enforceable in accordance with

¹⁵ *Id.* ¶ 42.

some known remedy.” *Puttuck v. Gendron*, 2008 UT App 362, ¶ 19, 199 P.3d 971 (quoting *Brown v. Wightman*, 151 P. 366, 366-67 (Utah 1915)).

The Marziales have not been denied their day in court. The requirements of Rule 5(e), specifically that papers submitted for filing be “accepted” by a court, apply to all civil cases in Utah and each paper submitted for filing. This requirement does not abrogate any cause of action or restrict a claimant from having a reasonable opportunity from being heard. Rather, it simply requires that a claimant submit papers in a form and in a manner that will properly allow acceptance by the EFS, a clerk, or a judge.

In this case, the Marziales’ complaint was rejected twice on August 2, 2013. The Marziales assert that there is no legal basis for their complaints submitted for filing on August 2, 2013 to have been rejected. As shown above and in the City’s opening brief, there is explicit authorization by Rule 5(e) and the Utah Code for the rejection of a complaint when a filing fee is not paid and in the implementation of the statutorily required case management system. In this case, the Marziales submitted a complaint to the EFS at 4:10:04 PM on August 2, 2013. (R. 167.) This complaint was automatically rejected by the CMS because the Marziales sought to file it with Spanish Fork district court, which does not “accept” claims for more than \$20,000.00 and the Marziales did not specify the amount of their claim. (R. 167.) Within less than one second, at 4:10:49 PM, a rejection notice was sent to the Marziales’ electronic filing service provider. (R. 167.) Less than ten minutes later, at 4:20:08 PM, the Marziales again submitted their complaint for filing with the Provo district court. (R. 167-166.) This complaint was not automatically accepted by the EFS and was subsequently rejected through the Clerk

Review Interface because the filing fee was not paid. (R. 168-166.) A second rejection notice was sent to the Marziales' electronic filing service provider at 4:41:56 PM. (R. 167-166). Both of these rejections were ministerial in nature – the EFS and the clerk did not reject the complaints based on the substance of the Marziales' claims. Hence, non-judicial personnel by no means performed a judge's task of rendering judgment on a litigant's claim. There is no evidence that the rejections of the Marziales' complaints on August 2, 2013 were arbitrary – there is no evidence that just the Marziales or that only a particular class of claimants would be subject to the standards providing the bases for the rejections. A claimant's failure to timely file a case simply does not present a question of due process or open access to the courts. The fact that the Marziales failed to submit a complaint that was accepted by the court, and neglected for over a month to verify that a complaint had been accepted by the court as required by Rule 5, does not raise concerns of due process or open courts access.

VIII. THE DISTRICT COURT DID NOT BREACH A DUTY TO PROVIDE THE MARZIALES WITH ADEQUATE NOTICE THAT THE COMPLAINT WAS REJECTED ON AUGUST 2, 2013.

Adequate notice was provided by the district court that the Marziales' complaint was rejected on August 2, 2013. Further, it is a lawyer's obligation to remain diligent when utilizing the EFS, and the facts of this case clearly show that the Marziales did not attempt to review or verify that a complaint had indeed been filed until after the running of the statute of limitations. These circumstances do not indicate that the district court breached a duty to the Marziales.

The Marziales, based on affidavits of their counsel and their counsel's legal assistant, assert that they never received the notices issued by the district court to their electronic filing servicer indicating that their complaint was not accepted on August 2, 2013.¹⁶ According to the Marziales, it is the district court's responsibility in carrying out its non-delegable duties to ensure that claimants receive notice of when papers submitted for filing are not accepted¹⁷ and that "[b]ecause Plaintiffs were never given notice by the district court of its actions, Plaintiffs' due process rights were violated."¹⁸

According to the Utah Supreme Court, "to comport with due process, notice must be 'reasonably calculated under all the circumstances' to give interested parties an opportunity to protect their interests." *Anderson v. Public Serv. Comm'n*, 839 P.2d 822, 825 (Utah 1992) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313-14, 94 L.Ed. 865, 70 S. Ct. 652 (1950)). The Marziales do not explain how the delivery of a notice to the electronic filing service, with whom their counsel contracted, was not reasonably calculated under the circumstances to give notice of the fact that their complaint had not been accepted on August 2, 2013. Rather, the Marziales simply assert that because they did not receive the notice, the court breached a duty owed to them.

In this case, despite the Marziales' assertions to the contrary, the facts indicate that the Marziales did receive notice of the rejection notifications. No explanation is provided

¹⁶ Aplee. Br., p. 43.

¹⁷ *Id.*

¹⁸ *Id.* at 47.

as to why the Marziales submitted their complaint for filing with the Provo district court within ten minutes after a notice being sent by the district court indicating that their complaint could not be accepted by the Spanish Fork district court. (R. 167-166.) The Marziales assert that they sought to file the second complaint because they failed to file the required undertaking, but they do not explain why they sought to file their second complaint in the Provo district court, or why the undertaking could not simply be submitted for filing with the Spanish Fork district court. Regardless, the Utah Court of Appeals, in *Aghdasi v. Saberlin*, 2015 UT App 73, ¶ 7, noted that courts “have been largely unsympathetic when faced with attorneys attempting to blame their failures on computer glitches.” The *Aghdasi* opinion further states:

For example, when the United States Court of Appeals for the D.C. Circuit was faced with an excusable neglect argument based on counsel’s failure to receive electronic notice of the defendant’s motion to dismiss, that court deemed the excuse “an updated version of the classic ‘my dog ate my homework’ line,” concluding that “[i]mperfect technology may make a better scapegoat than the family dog in today’s world, but not so here. *Fox v. American Airlines, Inc.*, 389 F.3d 1291, 1293-94, 363 U.S. App. D.C. 459 (D.C. Cir. 2004) (determining that “[r]egardless whether he received the email notice,” the plaintiffs’ attorney “remained obligated to monitor the court’s docket”).

Id. The Marziales assert that “[p]roblems with filing under the Court’s new e filing procedure are to be expected.”¹⁹ However, despite being armed with this knowledge, the

¹⁹ Aplee. Br., p. 35. In this regard, the Marziales point out that the index of the court record for this case shows a Reply Memorandum that was intended to be filed in another court and then assert that this filing appears on the court record “due to problems with the electronic filing system.” *Id.* at fn. 1. However, there was no error with the EFS. Counsel for the City, as previously indicated to the court of appeals, erroneously filed the

Marziales do not explain why they waited for over a month, and beyond the statute of limitations, to verify whether their complaint had been filed with the district court. (R. 108.) As set forth in *Aghdasi*, an expectation of diligence exists on behalf of a party or claimant, and such a party or claimant remains obligated to monitor a court's docket regardless of whether an email notice is received. *Aghdasi*, 2015 UT App 73, ¶¶ 7-8. In this case, the Marziales knew or should have known that their complaint was not accepted by the court on August 2, 2013. The Marziales simply failed to timely file their case. This is not the fault of the court. The lack of diligence on behalf of the Marziales, even assuming that they did not receive verification that their complaint was filed, does not constitute a breach of any duty by the district court.

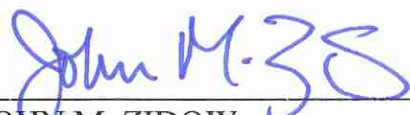
CONCLUSION

The complaints that the Marziales sought to file on August 2, 2013 were not accepted by any court. The district court did not have jurisdiction over the Marziales claims until September 10, 2013, the date on which the Marziales' submitted a third complaint for filing. By this time, the statute of limitations had run. Accordingly, the decision of the Court of Appeals should be reversed and the ruling of the district court should be affirmed.

Reply Memorandum with the Fourth District Court, and when an electronic confirmation receipt was not received verifying that the Reply Memorandum had been filed with the correct court, counsel for the City took the required steps to make sure that the Reply Memorandum was filed with the correct court on that same day.

RESPECTFULLY SUBMITTED this 24th day of February, 2017.

STRONG & HANNI

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CERTIFICATE OF COMPLIANCE

Pursuant to Utah R. App. P. 24(f)(1)(c), I hereby certify that this Brief complies with the type-volume limitation provided by Rule 24(f)(1)(a). This brief was prepared in 13-point Times New Roman font, and contains 6533 words, as calculated by Microsoft Word 2013.

DATED this 24th day of February, 2017.



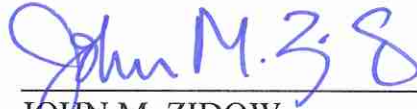
JOHN M. ZIDOW

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of February, 2017, two

(2) true and correct copies of the foregoing **REPLY BRIEF OF APPELLANT** and a courtesy copy of the brief on CD in searchable PDF format were mailed by first-class U.S. mail, postage prepaid thereon, to:

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